

Law Office of Ryan E. Hatch, PC
13323 Washington Blvd., Suite 100
Los Angeles, CA 90066
Tel: 310-279-5076 Fax: 310-693-5328

Merritt S. Locke (admitted *Pro Hac Vice*)
Saunders Kahler, L.L.P.
185 Genesee St., Suite 1400
Utica, NY 13501-2194
Work: 315-733-0419
Fax: 315-724-8522
mlocke@saunderskahler.com

Ryan E. Hatch (SBN 235577)
Law Office of Ryan E. Hatch, P.C.
13323 Washington Blvd., Suite 100
Los Angeles, CA 90066
Work: 310-279-5076
Mobile: 310-435-6374
Fax: 310-693-5328
ryan@ryanehatch.com

Attorneys for Defendants
55 ORISKANY BOULEVARD, INC. and MEYDA STAINED GLASS, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DALE TIFFANY, INC., a California
corporation,

Plaintiff,

vs.

55 ORISKANY BOULEVARD, INC.,
a Delaware corporation doing business
as MEYDA LIGHTING; MEYDA
STAINED GLASS, LLC, a New York
limited liability company; and DOES 1
through 10, inclusive,
Defendants.

Case No. 2:17-cv-00536-CAS-AGR

**REPLY BRIEF IN SUPPORT OF
DEFENDANT'S NOTICE OF
MOTION AND MOTION TO
DISMISS PLAINTIFFS'
COMPLAINT FOR LACK OF
PERSONAL JURISDICTION**

Hon. Christina A. Snyder

Date: October 2, 2017
Time: 10:00 a.m.
Courtroom: First Street Courthouse, 350
W. First Street, Courtroom 8D, 8th
Floor, Los Angeles, CA 90012

SAC filed Julv 19. 2017

Case No. 2:17-cv-00536-CAS-AGR

REPLY BRIEF IN SUPPORT OF DEFENDANT'S NOTICE OF MOTION AND MOTION TO DISMISS
PLAINTIFFS' COMPLAINT FOR LACK OF PERSONAL JURISDICTION

Law Office of Ryan E. Hatch, PC
 13323 Washington Blvd., Suite 100
 Los Angeles, CA 90066
 Tel: 310-279-5076 Fax: 310-693-5328

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. ARGUMENT	2
A. Defendant Meyda Has Provided Competent Evidence That It Conducts No Business and Should Be Dismissed	2
B. Plaintiff Concedes The Lack of General Jurisdiction Over 55 Oriskany	3
C. Plaintiff Has Failed to Make a Prima Facie Showing of Specific Jurisdiction Over 55 Oriskany	4
1. 55 Oriskany Did Not Commit Any Intentional Act Purposefully Directed Towards California	4
2. Plaintiff's Copyright Infringement Claims Do Not Arise Out of any Activities in California	7
3. Exercise of Jurisdiction Over 55 Oriskany in California is Not Fair or Reasonable.....	8
D. Plaintiff's Request for Jurisdictional Discovery Should be Denied	8
III. CONCLUSION	8

Law Office of Ryan E. Hatch, PC
 13323 Washington Blvd., Suite 100
 Los Angeles, CA 90066
 Tel: 310-279-5076 Fax: 310-693-5328

1 I. INTRODUCTION

2 In this Motion to Dismiss, defendants Meyda Stained Glass, LLC (“Defendant
 3 Meyda”) and 55 Oriskany Boulevard, Inc., a Delaware corporation doing business as
 4 Meyda Lighting (“55 Oriskany”) (collectively “Defendants”) request that the Court
 5 dismiss the Second Amended Complaint (Dkt. 24, “SAC”) under Fed. R. Civ. P.
 6 12(b)(6) for lack of personal jurisdiction.

7 As to Defendant Meyda, plaintiff Dale Tiffany, Inc. (“Plaintiff”)’s sole
 8 argument is that the declaration is not “competent” because the declarant, Robert
 9 Cohen, did not state his affiliation with Defendant Meyda. To the extent this was any
 10 issue at all, Mr. Cohen has affirmed that he is the sole member and officer of
 11 Defendant Meyda, and reaffirmed that the entity is dormant and conducts no business
 12 as he stated in his original declaration. Defendant Meyda must therefore be dismissed
 13 from this action.

14 As to 55 Oriskany, Plaintiff concedes the lack of general jurisdiction, and the
 15 Court must deny its request for further discovery because it has failed to establish a
 16 prima facie showing of general jurisdiction in the first instance.

17 Plaintiff has also failed to make a prima facie showing of specific jurisdiction.
 18 First, 55 Oriskany did not commit any intentional act purposefully directed towards
 19 California, and none of Plaintiff’s several theories in this regard have merit. First, 55
 20 Oriskany cannot have willfully or intentionally infringed Plaintiff’s purported
 21 copyright, because it had no prior knowledge of Plaintiff’s claims and immediately
 22 stopped selling all identified products when it first found out about the allegations via
 23 Plaintiff’s November 2016 letter. Second, the hiring of sales representatives was not
 24 suit-related conduct, and in any event was not an intentional act purposely directed
 25 towards California. Such sales representatives are not limited to California, do not
 26 generate sales exclusively for 55 Oriskany, and sell many other manufacturers’
 27 products at the same time. Moreover, any sales made as a result of their efforts are
 28 made directly by the purchasing company (usually a reseller) placing an order directly

Law Office of Ryan E. Hatch, PC
 13323 Washington Blvd., Suite 100
 Los Angeles, CA 90066
 Tel: 310-279-5076 Fax: 310-693-5328

1 to 55 Oriskany's facility in New York. Third, Plaintiff's reliance on various websites
 2 is misplaced. Plaintiff wrongly assumes that dealers can log in and place orders with
 3 55 Oriskany directly using the meyda.com website. In fact, dealers are not able to
 4 purchase any items directly from the website, and all orders are made directly through
 5 55 Oriskany's facility in New York. Nor does 55 Oriskany sell directly to any end
 6 user on the Amazon and Houzz.com websites. The true sellers are different third-
 7 parties that are not owned, controlled, or affiliated with 55 Oriskany.

8 Should the Court need to consider the second or third prongs, Plaintiff's
 9 arguments fail here too because its claim does not arise out of any activities in California,
 10 and the exercise of jurisdiction is not fair or reasonable. Lastly, Plaintiff's request for
 11 jurisdictional discovery should be denied because it has not identified any discovery
 12 that is actually needed, nor has it met its initial burden of establishing a prima facie case
 13 that jurisdiction is proper.

14 For the foregoing reasons, Defendants respectfully request that the Court dismiss
 15 the SAC under Rule 12(b)(2) for lack of personal jurisdiction.

16 **II. ARGUMENT**

17 **A. Defendant Meyda Has Provided Competent Evidence That It** 18 **Conducts No Business and Should Be Dismissed**

19 Plaintiff admits that Defendant Meyda provided evidence that it conducts no
 20 business and should be dismissed. (Dkt. 39 ("Opposition Br.") at 3-4 (arguing only
 21 that the evidence is not "competent.)) Indeed, Defendants provided the original
 22 Declaration of Robert Cohen ("First Cohen Decl.," Dkt. 38-1), wherein Mr. Cohen
 23 testified that Defendant Meyda is a dormant company that conducts no business, has
 24 never sold, manufactured, or designed any lighting products, and has never conducted
 25 any business under the name "Meyda Lighting." (Dkt. 38-1, June 15, 2017
 26 Declaration of Robert Cohen ("First Cohen Decl."), ¶ 3.) Plaintiff has not come
 27 forward with any evidence to the contrary.

28 Plaintiff's sole argument for keeping Defendant Meyda in the case is that Mr.

Law Office of Ryan E. Hatch, PC
 13323 Washington Blvd., Suite 100
 Los Angeles, CA 90066
 Tel: 310-279-5076 Fax: 310-693-5328

1 Cohen’s evidence is not “competent.” In particular, Plaintiff complains that Mr.
 2 Cohen did not state that he has a connection or relationship to Defendant Meyda, such
 3 as being an owner, officer, director, or employee. (Opposition at 3.) In the attached
 4 declaration, Mr. Cohen affirms that he is the sole member and officer of Defendant
 5 Meyda, and has reaffirmed that Defendant Meyda: (a) is a dormant New York
 6 company which, while still registered as active with the New York Secretary of State,
 7 conducts no business, and has never sold, manufactured, or designed any lighting
 8 products; (b) has no physical presence in the State of California; does not have any
 9 employees who reside or do business in the State of California; and (c) is not
 10 registered to do business in California. (September 18, 2017 Cohen Declaration
 11 (“Second Cohen Decl.”), ¶ 3.)

12 Based on the foregoing evidence, Defendant Meyda must be dismissed from
 13 this action.

14 **B. Plaintiff Concedes The Lack of General Jurisdiction Over 55**
 15 **Oriskany**

16 Plaintiff admits that it “does not currently have any facts showing that
 17 Defendants are domiciled in the State of California as to confer general jurisdiction.”
 18 (Opposition at 4.) This is a significant admission, because Plaintiff appeared to rely
 19 solely upon a theory of *general* personal jurisdiction in its Complaint. (*See* Dkt. 38
 20 (“Opening Br.”) at 5-6.)

21 Though it has conceded the lack of general jurisdiction over 55 Oriskany,
 22 Plaintiff now seeks to embark on a fishing expedition on the basis that discovery
 23 “may” disclose that Defendants are subject to general jurisdiction in California.
 24 (Opposition Br. at 2.) But it will not, because the evidence already shows that 55
 25 Oriskany is “at home” in New York where it is incorporated and has its principle place
 26 of business, and not in California. (*See* First Cohen Decl., ¶¶ 6-8.)

27 Moreover, the Court must deny this request for further discovery, because
 28 Plaintiff has failed to establish a *prima facie* showing of general jurisdiction in the first

Law Office of Ryan E. Hatch, PC
 13323 Washington Blvd., Suite 100
 Los Angeles, CA 90066
 Tel: 310-279-5076 Fax: 310-693-5328

instance. See Mavrix Photo, Inc. v. Brand Techs., Inc., 99 U.S.P.Q.2d 1562, 2011 (9th Cir. 2011) (when defendant makes a motion to dismiss based on written materials, plaintiff bears the burden of making a prima facie showing of jurisdictional facts to withstand the motion and cannot “simply rest on the bare allegations of its complaint”).

C. Plaintiff Has Failed to Make a Prima Facie Showing of Specific Jurisdiction Over 55 Oriskany

To defeat this Motion to Dismiss as to specific jurisdiction, Plaintiff was required to make a prima facie showing under the “purposeful direction” test set forth in Calden v. Jones, 465 U.S. 783 (1984). In particular, Plaintiff was required to show that 55 Oriskany: “(1) committed an intentional act; (2) expressly aimed at the forum state; (3) causing harm that the defendant knows is likely to be suffered in the forum state.” Picot, 780 F. 3d. at 1214. Plaintiff has failed to do so.

1. 55 Oriskany Did Not Commit Any Intentional Act Purposefully Directed Towards California

Plaintiff advances several theories why 55 Oriskany purposefully directed its activities to California. None of these theories have merit.

First, Plaintiff argues that 55 Oriskany committed an intentional act because it “willfully infringed plaintiff’s copyright with knowledge of both the existence of the copyright and the forum of the copyright holder.” (See Opposition at 4, citing Washington Shoe Co. v. A-Z Sporting Goods Inc., 704 F.3d 668, 678-679 (9th Cir. 2012).) For support, Plaintiff cites its allegations claiming that Defendants “willfully and knowingly infringed” its purported copyright. (Opposition at 5, citing SAC, ¶¶ 2, 9, 11-15, 20-23.) But the only factual allegation therein that might arguably pertain to this issue is that “Defendants have knowingly and intentionally used the Infringing Items as a ‘door opener’ to solicit customers to purchase other goods and services from Defendants.” (SAC, ¶ 15.) Even assuming this allegation to be true (which it is not),

Law Office of Ryan E. Hatch, PC
 13323 Washington Blvd., Suite 100
 Los Angeles, CA 90066
 Tel: 310-279-5076 Fax: 310-693-5328

1 using an item as a “door opener” does not establish knowing or intentional infringement
 2 of Plaintiff’s copyright, which is a different issue altogether.

3 Indeed, 55 Oriskany cannot have committed any “knowing” or “intentional”
 4 infringement, because it had no knowledge of Plaintiff’s purported copyright or related
 5 claims, including through attendance at tradeshow or by any other means, prior to
 6 receiving the notice letter from Plaintiff on November 9, 2016. (Cohen Decl., ¶ 4.) 55
 7 Oriskany could not possibly have known of Plaintiff’s claims any earlier than the letter,
 8 because Plaintiff itself contends that it only found out about the claims “[i]n or about
 9 September 2016” when the letter was sent. (SAC, ¶ 13.)

10 What’s more, upon receipt of Plaintiff’s letter, 55 Oriskany immediately stopped
 11 selling all identified products and notified its customers and resellers to cease selling the
 12 products, to remove the products from their websites, and avoid any potential future
 13 sales. (*Id.*, ¶ 6.); compare *Wash. Shoe Co. v. A-Z Sporting Goods Inc.*, 105 U.S.P.Q.2d
 14 1138, 1140 (9th Cir. 2012) (finding jurisdiction when “after receiving notice of the
 15 alleged copyright infringement through cease-and-desist letters, [the defendant] sold the
 16 infringing boots to a thrift store.”)

17 **Second**, Plaintiff contends that the hiring of sales representative John Bork
 18 “demonstrates a clear and unequivocal intentional act purposely directed towards
 19 California.” (Opposition Br. at 5-6.) But to exercise specific jurisdiction, “defendant’s
 20 suit-related conduct must create a substantial connection with the forum state.” *Walden*
 21 *v. Fiore*, 134 S. Ct. 1115 (2014) (emphasis added). Plaintiff makes no allegation that
 22 Mr. Bork or any other individuals sold the products at issue, displayed them in any
 23 catalogs, or were involved in any way with the allegations of this lawsuit. In fact, Mr.
 24 Bork ceased providing services for 55 Oriskany in March of 2014, long before this case
 25 was even filed. (Second Cohen Decl., ¶ 12.)

26 While 55 Oriskany contracts with individuals as independent manufacturers sales
 27 representatives throughout the United States including but not limited to California, such
 28 representatives do not generate sales exclusively for 55 Oriskany and sell many other

Law Office of Ryan E. Hatch, PC
 13323 Washington Blvd., Suite 100
 Los Angeles, CA 90066
 Tel: 310-279-5076 Fax: 310-693-5328

1 lighting manufacturers' products at the same time. (Id., ¶ 10.) Moreover, any sales
 2 made as a result of an independent manufacturer sales representative's efforts are made
 3 directly by the purchasing company (usually a reseller) placing an order directly to 55
 4 Oriskany's facility in New York. (Id., ¶¶ 10-11.)

5 **Third**, Plaintiff assumes that dealers can log in "and place orders with 55
 6 Oriskany directly" using the meyda.com website. (Opposition at 6.) This assumption
 7 is wrong. Despite that "the plaintiff bears the burden on the first two prongs" of this
 8 analysis, see Boschetto v. Hansing, 539 F.3d 1011, 2008 ILRC 2447, 25 ILRD 504 (9th
 9 Cir. 2008), here Plaintiff only makes unsupported assumptions, and has failed to present
 10 any evidence of what happens after a dealer logs into the meyda.com website. (See
 11 Plaintiff's Request for Judicial Notice, Dkt. 40, Ex. 1 (showing only the login page.))

12 While Plaintiff is correct that dealers can login to the meyda.com website, after
 13 login they are able to access the most recent online catalog and pricing for items, but,
 14 importantly, are not able to purchase any items directly from the website, and all orders
 15 are made directly through the facility in New York. (Second Cohen Decl., ¶ 14.)
 16 Accordingly, the meyda.com website is an "essentially passive website" that does not
 17 allow any transactions to be consummated, and does not satisfy the "purposeful
 18 availment" prong. See Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414, 44 U.S.P.Q.2d
 19 1928, 3 ILRD 215 (9th Cir. 1997).

20 **Lastly**, Plaintiff's reliance on the Amazon and Houzz.com websites is misplaced,
 21 because 55 Oriskany does not sell directly to any end user on these or any other websites.
 22 Here again, Plaintiff relies on incorrect assumptions about the functionality of websites.
 23 Plaintiff provides an alleged screen shot that purports to represent 55 Oriskany selling
 24 products through Amazon. (Dkt. 39-1, Kim Declaration, Exh. 1.) But a closer look
 25 shows that 55 Oriskany is not the seller of the product at all, but rather that the true seller
 26 is an entity called "Wingdings, LLC." (Second Cohen Decl., ¶ 8, Ex. B at 1.) Plaintiff
 27 is similarly mistaken with respect to Houzz.com. Plaintiff's exhibit purports to show a
 28 one-page listing wherein 55 Oriskany is supposedly advertising and selling the lamp on

Law Office of Ryan E. Hatch, PC
 13323 Washington Blvd., Suite 100
 Los Angeles, CA 90066
 Tel: 310-279-5076 Fax: 310-693-5328

Houzz.com. (Dkt. 39-1, Ex. 2.) But Plaintiff omits the complete listing, which shows that the true sellers of this item are different third-parties. (*Id.*, ¶ 9, Ex. C.) None of these third party sellers on Amazon or Houzz.com are owned, controlled, or affiliated with 55 Oriskany. (*Id.*, ¶¶ 8-9.) Plaintiffs should have known this, because 55 Oriskany already provided evidence indicating it makes sales only in four limited ways, none of which are through such websites. (First Cohen Decl., ¶ 3.)

As Plaintiff has failed in all of its arguments and assumptions under the first prong, there is no need for the Court to consider whether its claim arises out of or relates to any activities in California. See Pebble Beach Co. v. Caddy, 453 F.3d 1151, 1155 (9th Cir. 2006) (“[Plaintiffs] arguments fail under the first prong. Accordingly, we need not address [the remaining two prongs].”)

2. Plaintiff’s Copyright Infringement Claims Do Not Arise Out of any Activities in California

Should the Court need to consider the second prong, Plaintiff’s arguments fail here too because its claim does not arise out of any activities in California.

Plaintiff concedes, as it must, that it cannot rely on a “stream-of-commerce” theory to satisfy this prong. (Opposition Br. at 8.) Plaintiff therefore simply parrots the incorrect assumption in its FAC that 55 Oriskany engages in a “large scale” effort to distribute and display infringing items California. (*Id.* at 7.) But the Plaintiff “bears the burden of establishing that jurisdiction is proper” and “cannot simply rest on the bare allegations of its complaint.” Mavrix Photo, 99 U.S.P.Q.2d at 2011 (9th Cir. 2011). Tellingly, Plaintiff cites no factual evidence that 55 Oriskany has engaged in any such “large scale” or other efforts directed to California, which it does not. (First Cohen Decl., ¶¶ 6-11.) Plaintiff relies only on attorney argument, which should be given no weight, and simply repeats the same incorrect points it makes under the first prong, all of which lack merit for the reasons discussed above.

Law Office of Ryan E. Hatch, PC
 13323 Washington Blvd., Suite 100
 Los Angeles, CA 90066
 Tel: 310-279-5076 Fax: 310-693-5328

3. Exercise of Jurisdiction Over 55 Oriskany in California is Not Fair or Reasonable

Even if Plaintiff can establish the first two prongs (which it cannot), the third prong is not satisfied because the exercise of jurisdiction over 55 Oriskany in California is not reasonable and does not “comport with fair play and substantial justice.” Picot, 780 F.3d. at 1211. Notably, Plaintiff does not contend that California has any special interest in adjudicating this dispute, or that there are any “fundamental substantive social policies” at play in this case. See Burger King Corp. v. Rudzewicz, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985). For the foregoing reasons, the exercise of jurisdiction over 55 Oriskany in California is not fair or reasonable under the third prong.

D. Plaintiff’s Request for Jurisdictional Discovery Should be Denied

In the alternative, Plaintiff requests that it be able to conduct jurisdictional discovery “to the extent that the Court requires additional evidence.” (Opposition Br. at 9.) However, Plaintiff has not identified any discovery that is actually needed. This is significant, because it is Plaintiff that “bears the burden of establishing that jurisdiction is proper.” Mavrix Photo, 99 U.S.P.Q.2d at 2011 (9th Cir. 2011). By failing to identify any needed discovery, and there is none, Plaintiff concedes that the Court may decide the issue based on the evidence it has submitted.

III. CONCLUSION

For the foregoing reasons, Defendants respectfully requests that the Court dismiss the Complaint under Rule 12(b)(2) for lack of personal jurisdiction.

Law Office of Ryan E. Hatch, PC
13323 Washington Blvd., Suite 100
Los Angeles, CA 90066
Tel: 310-279-5076 Fax: 310-693-5328

1 Respectfully submitted,

2 Dated: September 18, 2017

LAW OFFICE OF RYAN E. HATCH, P.C.

3

4

5

By: /s/ Ryan E. Hatch

6

Ryan E. Hatch

7

Attorney for Defendants

8

*55 ORISKANY BOULEVARD, INC. and
MEYDA STAINED GLASS, LLC*

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28